

Points of Interest

California Acupuncture Board

Issue 8

May 2003

Recent Legislation

Effective January 1, 2003, SB 1951 (Chapter 714, Statutes of 2002) and AB 1943 (Chapter 781, Statutes of 2002) became law and amended several sections of law. Enclosed for your use and review is a copy of the current Laws and Regulations Relating to the Practice of Acupuncture. For your convenience, we've listed the specific changes to the Acupuncture Licensure Act below as a result of the passage of these two legislative bills.

Changes made as a result of the passage of SB 1951

Section 4928 (page 2) was amended by changing the sunset dates.

Section 4929 (page 3) was amended to require the board to include 3 acupuncturists who are not licensed as physicians and surgeons and one acupuncturist who is a faculty member of an acupuncture college approved by the board.

Section 4933 (page 3) was amended to provide that 5 members of the board constitutes a quorum.

Section 4934 (page 3) was amended by changing the sunset dates.

Section 4934.1 (page 3) was added to request the Little Hoover Commission to conduct separate reviews of specified issues with respect to the practice of acupuncture.

Section 4934.2 (page 4) was added to require the board to conduct certain studies and reviews relating to acupuncture assistants.

Section 4935 (page 4) was amended to provide that it is a misdemeanor for a person to fraudulently buy, sell, or obtain a license to practice acupuncture or to violate the provisions of law regulating the practice of acupuncture.

Section 4955 (page 7) was amended revising the list of specified acts that constitute unprofessional conduct.

Section 4955.1 (page 8) was added listing specified acts that constitute fraudulent acts.

Section 4955.2 (page 8) was added listing specified acts that would subject an acupuncturist's license to discipline.

Section 4960.2 (page 8) was added requiring the board to notify business licensing entities of acupuncturist license revocations in their city or county.

Changes made as a result of the passage of AB 1943

Section 4939 (page 5) was amended requiring that the standards established for the approval of schools and colleges include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist and requires that the revised standards be established by the board on before January 1, 2004. The section further provides that the standards would apply to all students entering programs on or after January 1, 2005.

To order additional copies of the Laws and Regulations, please send your written request and a fee of \$1.00 for each copy ordered to:

Acupuncture Board
1424 Howe Avenue, Suite 37
Sacramento, CA 95825

HIPAA Health Insurance Portability and Accountability Act

HIPAA – the Health Insurance Portability and Accountability Act – became the law of the land in 1996. Since then, the U.S. Department of Health and Human Services has been developing the regulations that will be required of health care organization entities, which include health care providers, employers, and health plans that collect information to meet federal reporting requirements.

Under the privacy rule – finalized during the summer of 2002 – health care organizations across the country must train all employees in the basics of patient privacy and confidentiality. The Federal Regulations required all health care employers to **comply with this rule by Monday, April 14, 2003.**

Listed below are website links that can be helpful to achieve compliance:

California Department of Health Services -

www.dhs.cahwnet.gov

California Office of HIPAA Implementation -

www.ohi.ca.gov

U.S. Department of Health and Human Services-

www.os.dhhs.gov

Medi-Cal related HIPAA information and provider bulletins – www.medi-cal.ca.gov

Useful content knowledge resource –

www.hipaainfo.net

Delinquent License Equals Illegal Practice

Licenses expire on the last day of the month in which the licensee was born. If fees are not received by this date, the license expires and becomes invalid.

Licensees who fail to renew their license on time and continue to practice are in violation of the law and subject to disciplinary action.

Continuing Education

As a condition of license renewal, all individuals with active licenses must complete 30 hours of Board approved continuing education. Exception: individuals renewing for the first time must complete continuing education hours based on the number of months licensed (see chart below).

<u>Period of Licensure</u>	<u>Required CE Hours</u>
13 to 16 months	20
17 to 20 months	25
21 to 24 months	30

Acupuncture Assistants

It has been brought to the Board's attention that many licensees are, or may be, employing unlicensed individuals in your acupuncture practice. These individuals are being referred to as "acupuncture assistants". If these individuals are performing needling, needle removal, cupping, moxibustion, or any other procedure which requires an acupuncture license, is considered the unlicensed practice of acupuncture. There is no legal provision or authorization for such unlicensed activity in conjunction with the practice of acupuncture in California.

Should the Board receive information that licensees are allowing acupuncture assistants to engage in activities which require an acupuncture license, the licensee(s) will be cited and fined not less than \$100 and no more than \$2,500 per occurrence.

Warning Doctorate / Ph.D. Programs

There are a number of doctorate and Ph.D. programs in acupuncture that are not approved by this state. If you are contemplating entering one of these programs, it is recommended that you first check with the Bureau of Private Postsecondary and Vocational Education (BPPVE) to see if the program has been approved. You may also verify the programs on BPPVE's website @ www.bppve.ca.gov under directory of institutions.

Warning to California Acupuncturists

The Board advises all licensees not to give out their license to anyone, even a prospective employer or insurance company. Repeated arrests by several different law enforcement agencies, established that a group, or businesses, engaging in prostitution and massage have continued to victimize acupuncturists. This has been done by obtaining, duplicating or "renting" acupuncture licenses, then using them to obtain a business license or permit as a guise for illegal activities. This is a serious matter which could lead to the revocation of your license. To protect your professional status keep the following in mind:

- If someone asks to see your acupuncture license, show them your pocket license. Never give your wall or pocket license to anyone or allow it to be duplicated. Duplicating or reproducing your license is a misdemeanor under [Section 119 \(f\) of the Business and Professions Code](#). If you need a duplicate certificate, or a letter of certification to verify your license status, for any reason, contact the Acupuncture Board.
- Under no-circumstances may a licensed acupuncturist work for, or be employed by, any person other than another acupuncturist, a physician licensed by the

Medical Board of California (MBC), or a healing arts professional corporation (see Corporations Code section 13401.5).

- Acupuncturists may not employ in their acupuncture practice any individual to perform Oriental Massage, unless that individual has complied with the local requirements for engaging in massage activities, e.g., valid massage degree or certificate, and massage business license/permit.
- Always verify a business prior to any interview. Ask for a business license number and verify it with the local city or county government agency that issues business licenses in your area.
- If the prospective employer is a physician or an acupuncturist, you can verify their license status by calling the MBC at (800)-633-2322 or the Acupuncture Board at (916) 263-2680, or by visiting our website www.acupuncture.ca.gov.

If you have any questions about your responsibilities as a licensed professional, contact our office between 8:00 a.m. and 5:00 p.m., Monday through Friday, at (916) 263-2680.

2003 Acupuncture Board Meetings

July 14, 2003
Arcadia

September 15 & 16, 2003
San Francisco

December 2 & 3, 2003
Pasadena

Subject Matter Experts

The Department of Consumer Affairs, Office of Examination Resources, works with the Acupuncture Board to develop the acupuncture licensing examination. Several workshops are held every year to develop new versions of the licensing examination. These workshops require the assistance of licensed acupuncturists to serve as subject matter experts (SME's) on acupuncture practice. SME's receive one hour of CE credit for each two hours worked. OER is trying to recruit SME's to assist in developing new versions of the examination. Without SME's, the California Acupuncture Licensing Examination would never take place.

If you are interested, take a moment to read the letter from OER. If you qualify, please complete their application and return it to the address listed on the form.

Continuing Education Course Survey

Business and Professions Code Section 4934.2 requires the Board to study and recommend ways to improve the quality and relevance of their continuing education (CE) courses. Therefore, the Board is requesting your assistance by completing the attached survey. Your input/recommendations is invaluable to the improvement of the quality and relevance of CE courses.

Acupuncturists Engaging in Telephone or Internet Prescribing Is Unprofessional Conduct

The Acupuncture Board has recently learned that some acupuncturists have been prescribing herbs over the telephone or internet. The Board has previously concluded that an acupuncturist is authorized to diagnose a patient's condition prior to rendering a treatment. Business and Professions Code section 4939(b) authorizes an acupuncturist to prescribe herbs, mineral products and dietary supplements to promote, maintain and restore health.

Diagnosing, prescribing and treatment are constituent elements of the practice of a healing arts practitioner, such as an acupuncturist. However, before a practitioner can prescribe a treatment or herb, he or she must diagnose the patient's condition. In evaluating whether a practitioner has performed a proper diagnosis, the Board will look to the standard of care that would be exercised by a practitioner in good standing who is prescribing similar treatments or herbs. If a diagnostic technique is inconsistent with the standard of care for a practitioner to prescribe herbs, the practitioner is subject to discipline for having engaged in unprofessional practice.

In traditional Chinese medicine, the diagnostic standard of care is to perform four specific examinations, which involve: a) asking questions; b) visual examination, including tongue diagnosis; c) palpatory examination, which may involve pulse, acupuncture point palpation, and abdominal examination, and d) listening/smelling examination, etc. These four examination components are commonly used in diagnostic procedures to evaluate and diagnose a patient's condition. Such techniques are not usable when an acupuncturist attempts to diagnose a patient's condition and prescribe a treatment over the telephone or internet. Accordingly, practitioners who diagnose and prescribe treatments over the telephone or internet may be failing to meet the standard of care and engaging in unprofessional conduct.

**Filing of Business Address(es)
and
Address Changes**

Business and Professions Code Section 4961 requires all licensed acupuncturists to register all places of practice with the Board. Section 4961 further requires that “Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change.” In the event a licensee fails to notify the Board of any change in the address of a place of practice within the time prescribed by Section 4961, the Board may deny renewal of licensure in addition to issuing a citation and fine to the licensee.

Every year the Board receives hundreds of documents returned due to insufficient or incorrect addresses. These returns represent a substantial monetary impact to the Board in postage and staff resources. Therefore, it is imperative to ensure all address information is always accurate and up to date with the Board. The appropriate filing forms for change of address and for registering all places of practice are included in this mailing.